

ARTICLE 13-06

DEFERRED PRESENTMENT SERVICE PROVIDERS

Chapter

13-06-01 Deferred Presentment Service Providers

CHAPTER 13-06-01

DEFERRED PRESENTMENT SERVICE PROVIDERS

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13-06-01-01. Definitions. As used in this chapter:

1. "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly rate, as calculated under the Truth in Lending Act [15 U.S.C. 1601].
2. "Closed transaction" or "close" means a completed deferred presentment service transaction that has been closed on the database.
3. "Close of business" means the time of day that a provider closes its office to the public for the calendar day.
4. "Database" means the statewide transactional database administered by the department pursuant to North Dakota Century Code chapter 13-08.

5. "Database vendor" means the vendor contracted with the department for the purpose of developing and administering the daily operations of the database.
6. "Date of the transaction" means the date on which the written agreement is signed and the funds are advanced.
7. "Deferred presentment service provider" means an entity often referred to as a payday loan, payday advance, or deferred deposit loan provider.
8. "Department" means the North Dakota department of financial institutions.
9. "Financial responsibility" means a financial condition, at a minimum, that is a positive net worth as disclosed in the most recent financial statement.
10. "Generally accepted accounting practices" means procedures adopted by the American institute of certified public accountants and federal accounting standards boards.
11. "Maturity date" means the date agreed upon by a licensee and customer to present a check for final payment. "Maturity date" may also be referred to as date of negotiation, date of presentment, or presenting a check for payment.
12. "Open transaction" or "open" means a deferred presentment service transaction which has been registered and recorded but not completed on the database.
13. "Principal shareholders" means any shareholders which control directly or indirectly the power to vote twenty-five percent or more of the voting shares of the corporation.
14. "Recorded" means the database has assigned a transaction authorization number to a registered transaction, logged it as an open transaction, and communicated the transaction authorization number to the deferred presentment provider.
15. "Registered" means that a deferred presentment provider has provided to the database the information required to identify a valid deferred presentment transaction.
16. "Transaction" means a deferred presentment service transaction.

17. "Unencumbered assets" means any assets when a market value can be readily determined and which are not pledged or held under a security interest.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-01

13-06-01-02. Financial responsibility. In order to determine financial responsibility, applicants shall provide with the application the most current fiscal year-end financial statements, prepared in accordance with generally accepted accounting principles. The applicant shall also include financial statements for the most recent quarter end.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-03

13-06-01-03. Determination of bond amount. Each applicant shall maintain a bond issued by a surety company authorized to do business in this state. The bond amount is generally based on the high point of the receivables of the applicant's business, as of the most recent March thirty-first report. If an applicant has more than one licensed location, the bond amount is based on the combined receivables of all locations as of the most recent March thirty-first report. The initial bond amount is based on projected receivables.

A minimum of a twenty thousand dollar bond is based on receivables less than one hundred thousand dollars; a minimum of a fifty thousand dollar bond is based on receivables from one hundred thousand dollars to two hundred fifty thousand dollars; and a minimum of a seventy-five thousand dollar bond is based on receivables greater than two hundred fifty thousand dollars.

However, the commissioner may require a higher bond in the commissioner's sole discretion. The basis for determining the bond amount or any increases in the amount will be based, in part, on:

1. Financial responsibility of the licensee.
2. Issuance of any enforcement action against the licensee by this state or any other governmental entity.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-03(4)

13-06-01-04. Application. A photograph of the exterior and interior of the business location must be included with the initial application. The application must include fingerprint cards from principal shareholders and managers. Any

application received that is incomplete will be returned to the applicant and will not be considered for a license until the completed application is submitted in full.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-04, 13-08-10

Law Implemented: NDCC 13-08-04(3), 13-08-06(1)

13-06-01-05. Posting fees. Licensees shall post a notice of fees in a conspicuous location in a minimum font size of forty-eight point.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-06(1)

13-06-01-06. Change of control. The change of control application must be filed and approved by the commissioner prior to the date the change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The new applicant must meet the same criteria required of all deferred presentment service provider applicants, including payment of the investigation fee of four hundred dollars. At the commissioner's discretion, the commissioner may require a new license application.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-07, 13-08-10

Law Implemented: NDCC 13-08-07

13-06-01-07. Reports of commissioner. Written reports in this section must be on a form prescribed by the commissioner. Written reports that are required by the commissioner to be filed within fifteen calendar days of the occurrence of the events are:

1. A report of the name change of the licensee must be filed with the department prior to the name change.
2. Whenever a licensee desires to change the licensed place of business, the licensee shall provide the department with the following prior to the relocation:
 - a. A written notice providing the complete address of the new location.
 - b. Photographs of both the exterior and interior of the new location.
 - c. A written sworn statement that the new location will not share the premises with that of another business.
 - d. A report of a change of management of the licensee.

- e. The original license for reissue.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-08(4)

13-06-01-08. Regulations - Examinations. For purposes of any investigation, examination, or proceeding under North Dakota Century Code chapter 13-08, the commissioner may require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the examination, investigation, or proceeding.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-10

13-06-01-09. Retention of records. The records must be kept for six years from the date of the last transaction. Records must be located at the licensee's business location. With the commissioner's prior written approval, the licensee may retain records at a location other than the licensed location. The licensee shall make a written request to retain records at a location other than the licensed location which shall include the following:

1. The address of the offsite location.
2. A contact person and telephone number at the offsite location.
3. An acknowledgment that the licensee will pay for all examination expenses.
4. A statement that all books, records, and account information shall be made available within seventy-two hours after the department's request at either the licensed location or the offsite location.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-11

13-06-01-10. Required records. Every licensee shall keep the following records:

1. **Transaction register.**
 - a. The transaction register must contain the original entry and be a permanent record, and must show for every transaction the transaction number, date of transaction, maturity date, date of rollover and new maturity date if any, amount of transaction, name of customer, and the amount of fees expressed in dollar amount.

- b. The transaction register must be kept numerically by transaction number in the order made and must have headings for each of the items required.
2. **An individual account record.** An individual account record must be kept for each customer. Such account record must show the name and address of the customer, transaction number, date of transaction, maturity date, and fee expressed in dollar amount.
3. **File of all original papers.** A separate file shall be maintained for each customer and shall contain the written agreement and acknowledged copy of the disclosure statement of transaction. Evidence of disclosure must be retained for six years from the date of the transaction. When prior written approval has been obtained from the commissioner, a licensee may maintain these files in any medium or format that accurately reproduces original documents or papers.
4. **Check copies.** Copies of checks received in the deferred presentment service transaction.
5. **Cash book.** All receipts and disbursements, of any amount whatsoever, must be entered in the cash book or equivalent record on the day they occur. Separate headings must be provided for payments and fees collected from customers. The cash book must be a record of all details of income and disbursements, including all entries to individual accounts of customers.
6. **Alphabetical record of customers.** The alphabetical record must show the transaction number and the name of each customer who is currently indebted to the licensee, with sufficient information to locate the account record.
7. **Permanent file.** Each licensee shall maintain a permanent file which includes the following:
 - a. A copy of all correspondence sent to or received from the department within the past twenty-four months.
 - b. A copy of the last two examination reports and any related correspondence.
8. **Check record.** A record must be retained of each check presented for negotiation, including checks deposited, cashed, and checks presented directly to the customer's issuing bank.
9. **Returned checks.** A record must be retained of all checks returned for nonsufficient funds, account closed, or stop payment.

10. **Rescinded transactions.** A record must be retained of all rescinded transactions by customer as a separate record.

Erasures may not be made in the payment and charge sections of any account records or written agreements. In case of error, a line must be drawn in ink through the improper entry and the correct entry made on the following line. The entries on the record must correspond with the receipts given the customer.

Records of transactions made under North Dakota Century Code chapter 13-08 must be kept separate or readily identifiable from other types of business conducted in the office.

Electronic data processing, combination forms, and special office systems may be used if in accordance with generally accepted accounting practices and must contain the information required by this section.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-11

13-06-01-11. Procedures.

1. Each document used in the transaction process bearing evidence of indebtedness, and executed by a check maker, must bear a transaction number.
2. The name and address of the licensee making the transaction must appear on all disclosure statements, all written agreements, and any other documents associated with the transaction.
3. At the time any transaction is made, the licensee shall give to the maker of the check a written disclosure statement. The written disclosure statement must be in a font size not less than ten point. The disclosure statement must be signed by the check maker.
4. The disclosure statement must contain the following items, which must be explained to and initialed by the check maker:
 - a. The schedule of fees charged;
 - b. No security held as condition of transaction or method of collection; and
 - c. Information required under federal law:
 - (1) Truth in Lending Act [15 U.S.C. 1601].

- (2) Privacy notice under Federal Trade Commission Regulation - Privacy of Consumer Financial Information [16 CFR, part 313].
 - (3) Equal Credit Opportunity Act [15 U.S.C. 1691-1691f].
5. A licensee may not take any written agreement or other document related to the transaction in which the blanks are not filled in completely before the proceeds of the transaction are delivered. All spaces or sections not used in the preparation of legal documents must be ruled out or designated as "none" or "N/A".

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12(1)

13-06-01-12. Credit practices. Any deferred presentment service provider that contracts with a third-party collection service in an attempt to collect nonsufficient funds, account closed, stop payment orders, or any other returned checks shall provide in the contract a notice of the twenty dollar maximum allowed returned check charge collected per transaction.

A licensee while collecting or attempting to collect an alleged debt may not engage in any of the following acts:

1. Using or threatening to use force, violence, or physical harm to a customer or the customer's family or property.
2. Threatening arrest or criminal prosecution when no basis for such action lawfully exists.
3. Threatening the seizure, attachment, and sale of a customer's property when such action can only be taken pursuant to court order unless disclosure is made that prior court proceedings are required.
4. Disclosing or threatening to disclose information adversely affecting a customer's reputation for creditworthiness with knowledge or reason to know such information is false.
5. Threatening to initiate or initiating communication with a customer's employer.
6. Communicating or threatening to communicate with a customer or the customer's family with such unreasonable frequency as to constitute harassment or at times reasonably considered to be unusual hours or known to be inconvenient.
7. Using profane, obscene, or abusive language with a customer or the customer's family.

8. Disclosing or threatening to disclose information relating to a customer's indebtedness to any other person except when such other person has a legitimate business need for the information.
9. Disclosing or threatening to disclose information concerning the existence of a debt, which the licensee knows to be reasonably disputed by the customer, without disclosing the fact that the debt is disputed.
10. Attempting or threatening to attempt enforcement of a right or remedy with knowledge or reason to know that the right or remedy does not exist.
11. Using any form of communication simulating legal or judicial process which gives the appearance of being authorized, issued, or approved by a governmental agency or official or attorney at law when it is not.
12. Using badges, uniforms, or other indicia of any governmental agency or official except as authorized by law.
13. Misrepresenting the amount of the debt alleged to be owed.
14. Representing that an alleged debt may be increased by the addition of attorney's fees, investigation fees, or any other fees or charges when there is no contractual or statutory authorization for such addition.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12

13-06-01-13. General.

1. The deferred presentment service check must be presented for payment within sixty days of the original transaction date.
2. When a payment is made in cash, the licensee shall give a receipt to the customer.
3. Unless otherwise authorized by subsection 14 of North Dakota Century Code section 13-08-12, no other business may be conducted at the licensed location unless authorized in writing by the commissioner. The commissioner's authorization will be predicated upon the licensee's agreement to the following:
 - a. That the authorization will not conceal nor facilitate concealment of an evasion of North Dakota Century Code chapter 13-06.
 - b. To comply with any applicable state or federal statutes and regulations.

- c. To obtain any license or registration required by a federal, state, or local governmental agency to engage in the other business authorized.
- d. That the commissioner may examine all records and investigate any or all transactions of the licensee.
- e. That the commissioner retains the right, upon notice and opportunity to be heard, to alter, amend, or revoke another business authorization.
- f. That if any federal or state statute or regulation enacted thereafter prohibits the activity, the authorization shall become null and void immediately.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12

13-06-01-14. Written agreement. Repealed effective April 1, 2013.

13-06-01-15. Surrender of license. A licensee may surrender a deferred presentment service business license by delivering to the commissioner written notice that the license is surrendered. The surrender does not affect the licensee's civil or criminal liability for acts committed prior to such surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The commissioner may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as the commissioner deems necessary for the protection of the maker of checks that are outstanding at the time of surrender of the license.

History: Effective July 1, 2001.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-10

13-06-01-16. Advertising. A licensee may not advertise in a false, misleading, or deceptive manner or imply or indicate that the rates or charges for loans made are "approved", "set", or "established" by the department of financial institutions.

History: Effective July 1, 2001; partially voided effective April 17, 2002.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-10

13-06-01-16.1. Database. The commissioner may directly administer, or contract with a third-party vendor to operate and maintain a website on behalf of the department, in which each transaction shall be recorded for the purpose of preventing violations of North Dakota Century Code chapter 13-08. Each transaction shall be registered with the database and receive a transaction

authorization number evidencing the transaction as being recorded in the database prior to a licensee giving currency or a payment instrument to the customer. As part of the registration process, the licensee shall choose an employee to serve as the licensee's security administrator to act as a point of contact for matters relating to the database administration.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-02

13-06-01-16.2. Database transaction requirements.

1. Prior to engaging in any transaction, a licensee must:
 - a. Access the vendor database using the assigned user identification and password provided to each employee by the security administrator for the licensee.
 - b. Conduct a search of the database based upon either a social security number, alien registration number, or individual taxpayer identification number of the customer seeking a new transaction. The database will provide the result of the search indicating whether the customer is eligible or ineligible to enter into a new transaction.
 - c. If the customer is eligible for a new transaction, the licensee shall submit all of the required information regarding a customer necessary to have the transaction registered on the database.
 - d. Once all of the required information has been submitted to the database, and the customer's eligibility is confirmed, the transaction will be recorded as open on the database, assigned a transaction authorization number, and the transaction authorization number will be communicated to the licensee as evidence that the transaction has been authorized by the database. The licensee shall place the transaction authorization number on the deferred presentment agreement and provide a copy of the agreement to the customer.
 - e. In the event that the database is not accessible, the licensee shall follow procedures outlined by the database vendor.
2. It is a violation of this chapter for a licensee to knowingly enter transactional information into the database that is incomplete or inaccurate.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

13-06-01-16.3. Cancellation, modification, or closing of transactions on database.

1. If a deferred presentment agreement is canceled, the licensee shall not assess either the transaction fee or the verification fee to the customer. The licensee shall immediately close the transaction on the database.
2. If a licensee becomes aware of a change of information relating to an open transaction, the licensee shall immediately update the transaction on the database to ensure that all identifying information regarding both the customer and the transaction are accurate, including any comments on the transaction which the licensee deems relevant.
3. Licensee shall be responsible for immediately closing all transactions on the database. The licensee shall input the date a transaction closes, as well as the payment method.
4. The department shall have the authority to make changes to the database transactions as deemed necessary. This includes the ability to instruct the database vendor to close any transactions associated with a licensee whose license to conduct business in North Dakota remains in a nonactive status for thirty days or more.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

13-06-01-16.4. Database transaction fees. A licensee shall be responsible to make payment of all database transaction fees charged for registering a transaction on the database administered or authorized by the commissioner. Database transaction fees will be charged on a per transaction basis. A licensee may charge the database transaction fee to each customer securing the loan for which the database transaction fee is based.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12